

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MAKOVA MCCASKEL AS)
PERSONAL REPRESENTATIVE)
OF THE ESTATE OF WILBUR)
WALTER RUMPH,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)
)
)
)

CIVIL ACTION FILE NO. 3:17-cv-02697-MBS

COMPLAINT

Plaintiff Makova McCaskel, as Personal Representative of the Estate of Wilbur Walter Rumph, allege:

1. This is an action arising under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et. seq. This Court is vested with jurisdiction pursuant to 28 U.S.C. § 1346(b).

2. Plaintiff's place of residence is in Richland County, South Carolina.

3. At all times mentioned herein, Defendant United States of America, through its agency the Department of Veterans Affairs (the "VA"), owned and operated William Jennings Bryan Dorn Veterans Administration Medical Center in Columbia, South Carolina (the "Columbia VAMC"). At all times relevant to this action, the physicians and health care professionals listed by name in this complaint were engaged in the course and scope of their employment with Defendant.

4. The events or omissions giving rise to this cause of action occurred at the Columbia VAMC in this district.

5. Timely and adequate administrative claim notices were sent to and received by the Office of Regional Counsel, Department of Veterans Affairs, regarding the claims made herein.

6. Notice of the denial of Plaintiffs' claims was sent to Plaintiffs on September 26, 2017.

7. Makova McCaskel is the duly appointed Personal Representative of the Estate of Wilbur W. Rumph, her deceased father.

8. Mr. Rumph was an honorably discharged veteran of the United States.

9. On June 10, 2015, Mr. Wilbur W. Rumph, age 73, presented to the Columbia VAMC with shortness of breath. Dr. Angela Castillo, a board certified physician in internal medicine, ordered a chest film. The completed study was interpreted by Dr. Jennings G. Pressly, Chief of Radiology. Dr. Pressly found interstitial pulmonary fibrotic changes in the chest.

10. On July 16, 2015, Mr. Wilbur W. Rumph, was again seen at the V.A. Hospital for left shoulder pain. Dr. Castillo ordered an x ray of the left shoulder.

11. The radiologist, Dr. Sylvia Ford, read the film and issued a written report on July 16, 2015. Dr. Ford found an area in the shoulder suspicious for fracture. However, in the adjacent chest, Dr. Ford noted there appeared to be a 1.6 cm perihilar nodule in the left midlung. Dr. Ford recommended follow up on the lung lesion with a contrast enhanced CT of the chest unless the lesion was a known finding. Dr. Ford's report stated that a "note was left in CPRS for Dr. Castillo at 11:20AM on the day of the examination." Further, Dr. Ford's report stated "In the absence of Dr. Castillo and RN Candi Dykes, a telephone message was given to the white team nurse leader Bonnie Grissom at 11:15 AM on the day of the examination."

12. The note was a Radiology Code 15 Provider Notification. It read, “This alert is to notify Dr. Castillo that on this day at Jul 16, 2015 @ 11:21 Wilbur W. Rumph has imaging finding that require additional imaging to exclude neoplasm as reported on the left shoulder x-ray of Jul 16, 2015.”

13. On July 16, 2015 at or about 3:47 PM Diane T. Williams, RN relayed information about Mr. Rumph to Dr. Castillo. Dr. Castillo spoke with Dr. Ford on the phone to clarify the radiology findings.

14. On July 24, 2015, Dr. Castillo ordered a CT scan of the Thorax with contrast due to the previous radiology study finding a left pulmonary nodule in the perihilar portion of the left lung. According to Dr. Richard Killingsworth, the radiologist, the CT scan revealed two closely adjacent noncalcified pulmonary nodules within the extreme superior aspect of the left lower lobe, located just posterolateral to the midportion of the left hilum. The larger nodule measured 2.1 cm in diameter while the smaller nodule measured 1.2 cm. The study also revealed two closely adjacent noncalcified pulmonary nodules at the inferolateral aspect of the right upper lobe. The larger pulmonary nodule measured 1.2 cm in diameter while the other pulmonary nodule measured 1.1 cm. Dr. Killingsworth’s impression was that the findings raised the possibility of neoplastic disease.

15. Dr. Castillo ordered a CT scan of the abdomen and pelvis with and without contrast on August 13, 2015, in part due to the previous July 2015 findings of two noncalcified pulmonary nodules within each lung. No evidence suggesting a neoplasm was demonstrated.

16. Dr. Taundolyn D. Suber ordered a MRI of the abdomen on November 23, 2015 due to dilated intrahepatic ducts, the common bile duct, as well as multiple cysts seen on a previous CT scan.

17. Dr. Suber sent Mr. Rumph a letter dated November 23, 2015 with the results of the MRI study. The study and the letter did not address the lesions found in the lungs.

18. Mr. Rumph presented to the Columbia VAMC on February 10, 2016 for an optometry consultation.

19. On March 21, 2016 Mr. Rumph presented to the Columbia VAMC emergency department with complaints of chest pain. The pain was reproducible. Mr. Rumph stated he was stretching and the pain started shortly afterwards. Mr. Rumph was seen by Dr. Jaswinder Chauhan. Dr. Chauhan diagnosed chest wall pain.

20. On June 10, 2016 Mr. Rumph presented to the Columbia VAMC and was seen by Dr. Taundolyn Suber in follow up for his chronic hepatitis C condition. His HCV treatment was continued. Dr. Suber noted Mr. Rumph's history of an abnormal CT scan/MRI with dilated intrahepatic ducts and common bile duct and hepatic cysts. He was to follow up in 4 months.

21. Mr. Rumph presented to the Columbia VAMC emergency department on July 15, 2016 for a painful cough since June. He was seen by Shawna Heglar, a nurse practitioner. Apparently, Nurse Heglar reviewed the July 24, 2015 CT of the Thorax showing the two noncalcified pulmonary nodules within each lung and raising the possibility of neoplastic disease. As a result a new chest study was performed and interpreted by Dr. Jennings G. Pressley. It showed the lobular left perihilar mass with right central pulmonary nodule and with

significant enlargement in comparison to prior studies compatible with underlying malignancy.

A stat consult was placed for biopsy and interventional radiology as well a pulmonary and oncology consult.

22. On July 29, 2016 Mr. Rumph underwent a bronchoscopy and tissue was taken for cytopathology. The biopsy was positive for lymphangitic carcinoma.

23. Mr. Rumph underwent a PET scan on August 8, 2016. The study revealed bilateral hypermetabolic masses consistent with synchronous primary bronchogenic carcinomas, bilateral adrenal metastases, scattered osseous metastases.

24. On or about August 12, 2016 Dr. Robert O. Palmer, oncologist, informed Mr. Rumph that he had widespread metastatic disease which was incurable. He was to be referred to radiation oncology for palliative treatment.

25. On August 18, 2016 Mr. Rumph met with Dr. Brandon Stone at South Carolina Oncology Associates. Dr. Stone noted the diagnosis of stage IV non-small cell lung cancer with left chest wall, bone and adrenal metastases and recommended a course of external beam radiotherapy to relieve pain. Mr. Rumph completed the course of palliative radiotherapy from August 29 to September 13, 2016.

26. On September 16, 2016 a meeting was held at the V.A. Hospital with Mr. Rumph and his family, as well as Dr. Bernard DeKoning, Chief of Staff. Dr. DeKoning admitted there had been a one year delay in the diagnosis of Mr. Rumph's lung cancer.

27. On October 4, 2016, Mr. Rumph was brought to the V.A. Hospital emergency department after his family noted he was breathing heavier and louder and seemed more

lethargic. There was concern for aspiration pneumonia because of difficulty swallowing secondary to radiation esophagitis. He was ultimately discharged to home hospice care.

28. On November 8, 2016 Mr. Rumph died of complications from his lung cancer.

29. Dr. Castillo and other staff of the V.A. Hospital were negligent, grossly negligent, willful and wanton, breaching the standard of care in the following particulars:

- In failing to follow up on the July 24, 2015 CT scan of the chest which raised the possibility of neoplastic disease.
- In failing to consult or refer Mr. Rumph to appropriate consultants to work up his suspicious lung lesions and begin timely treatment.

30. The affidavit of Dr. Peter Pushkas, M.D., a board certified physician in internal medicine and oncology is attached hereto, pursuant to S.C. Code Ann. § 15-36-100, and is incorporated herein by reference. This affidavit sets forth at least one negligent act or omission by Defendant via its employees and/or agents.

31. As a direct and proximate result of the negligence and gross negligence of Defendant's employees and/or agents, Mr. Rumph suffered injury and pain and died.

FOR A FIRST CAUSE OF ACTION
(Survival Action)

32. As a result of the above described acts of Defendant, Mr. Wilbur W. Rumph was severely injured and died. As a direct and proximate result of the incident, Mr. Wilbur W. Rumph underwent much physical pain, suffering, mental anguish, emotional distress, and loss of enjoyment of life before his death and incurred expenses for medical care.

FOR A SECOND CAUSE OF ACTION
(Wrongful Death Action)

33. As a result of the above described acts of Defendant, Plaintiff and the other statutory beneficiaries of Mr. Wilbur W. Rumph have suffered, and will in the future suffer:

1. Grief;
2. Shock;
3. Sorrow;
4. Wounded feelings;
5. Loss of companionship;
6. Loss of the deceased's counsel on family matter;
7. Emotional distress;
8. Pecuniary loss in funeral expenses;
9. Loss of the deceased's financial support.

WHEREFORE, Plaintiff prays for judgment in this matter in a sum sufficient to adequately compensate the estate and the statutory beneficiaries for damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

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ATTORNEYS FOR PLAINTIFFS

This 5th day of October, 2017

Columbia, South Carolina